

STAFF REPORTS - SUSTAINABLE ENVIRONMENT AND ECONOMY

Report No. 13.5 Submissions Report - Draft Short Term Holiday Accommodation Strategy

Directorate: Sustainable Environment and Economy
Report Author: Sharyn French, Manager Land and Natural Environment
File No: I2014/101
Theme: Ecology
 Land and Natural Environment

Summary:

Holiday letting of dwellings in coastal communities like Byron Shire has grown in popularity over the years. The letting of homes in residential neighbourhoods to holiday makers, has at times been at the expense of the peace and enjoyment expected in a neighbourhood community. It is clear that better management is required for this type of accommodation, combined with appropriate planning mechanisms to legitimise the use.

The process to develop planning mechanisms to guide this form of development commenced in 2013 with key stakeholder workshops that continued into 2014. From these workshops a Discussion Paper was prepared for key stakeholder's consideration. Comments on the Discussion Paper then led to the development of a Draft Short Term Holiday Accommodation Strategy that was publicly exhibited from 11 November to 22 December 2014. Over 150 submissions were received including two from state government agencies. As a result of state government and public feedback on the draft Strategy, changes have been made to the proposed planning controls and action plan. The Byron Shire Short Term Rental Accommodation Action Plan encapsulates these changes. It assigns responsibility for each action and a timeframe for their delivery; it also details the revised planning controls that will be the subject of a further public exhibition.

RECOMMENDATION:

That Council:

1. **Adopt the Byron Shire Short Term Holiday Accommodation Action Plan, Attachment 1 (E2015/14847)**
2. **Prepare a planning proposal to amend Byron LEP 2014 in accordance with the proposed planning controls in Attachment 1 (E2015/14847) and submit the planning proposal to the Department of Planning and Environment for a Gateway Determination.**
3. **Request the Department of Planning and Environment to delegate to Council the preparation and making of the LEP amendment.**
4. **Publicly exhibit the proposed amendments to DCP 2014 in Attachment 1 (E2015/14847) for a minimum of 28 days and concurrently with the planning proposal to amend the Byron LEP 2014.**

Attachments:

- 1 Byron Shire Short Term Holiday Accommodation Action Plan, E2015/14847 (provided under separate cover)
- 2 Submissions Analysis, E2014/84388 (provided under separate cover)
- 3 Form of Special Disclosure of Pecuniary Interest, E2012/2815 , page 35

Report:

Council resolved:

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Resolution 13-530

1. That Council prepare a Holiday Letting Strategy with the following purposes in mind:

(i) examining issues raised in workshops during 2013;

(ii) examining Zoning/precinct options;

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(iii) facilitating the preparation of a future LEP amendment;

(iv) supporting the amendment and hence justifying it to the DOPI; and

(v) pursuing legislative changes to facilitate strategy options.

2. That staff pursue planning and legislative discussions with the Dept of Planning.

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Concerns about the impacts that some holiday lets have on residential amenity has been a long standing issue in the Shire. Council has attempted to regulate holiday letting in the past commencing with a Holiday Letting Forum in 2005, a precinct based model in 2008, inclusion of precinct provisions in Council's draft Local Environmental Plan (LEP), and investigating options to regulate holiday letting by means other than the Environmental Planning and Assessment Act such as licensing and registration under S68 of the Local Government Act. The past attempt to include planning controls in the LEP were curtailed by the Department of Planning who then advised that it was 'not appropriate [for Council] to control holiday tenancies through the planning system'.

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The Department of Planning subsequently advised in 2012 that they now:

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'consider the issue of holiday letting to be a local issue and as such it is up to local Councils to manage holiday letting. In local government areas with a high incidence of holiday letting councils may choose to address amenity issues relating to holiday letting in their local plans'

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In 2013 the NSW Land and Environment Court found that the use of a dwelling house in Gosford for short term holiday rental accommodation was prohibited as it was not sufficiently permanent to comprise a 'dwelling house' under Gosford Councils residential zone. The Court found Gosford Council's refusal to act on the neighbours complaints was an *'abrogation of council's fundamental duties and responsibilities'*. The Court also found that Gosford Council had a duty to amend the ambiguous terms and remedy any deficiencies in their planning instruments.

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The Department's advice together with the court case findings, which creates precedence and an implied requirement for Councils to review their planning controls, has enabled Council to re-consider LEP controls for holiday letting.

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The process taken to prepare planning controls commenced in 2013 with key stakeholder workshops that continued into 2014. From these workshops a Discussion Paper was prepared for key stakeholder's consideration. Comments on the Discussion Paper then led to the development of a Draft Short Term Holiday Accommodation Strategy. The draft Strategy was reported to Council at the 30 October 2014 Meeting at which Council resolved (14-547) to exhibit the draft Strategy.

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The Strategy was publicly exhibited from 11 November to 22 December 2014. During this time two workshops were held with key stakeholders on 24 November and 5 December. Council officers were also in attendance, to discuss the draft Strategy, at the Mullumbimby and Bangalow Shows, and the Byron and New Brighton Farmers Markets.

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Council received 153 submissions on the draft Strategy, including a submission from the Department of Planning and Environment and NSW Rural Fire Service. Copies of all submissions received have been provided to the Councillors on CD. Issues raised in all submissions received

were collated under common themes. Attachment 2 includes the submission issues raised and staff comments and recommendations.

The issues raised in the submissions and proposed changes to the planning controls and actions were discussed with Councillors over two workshops on the 12 and 26 March 2015.

As a result of the issues raised in the submissions, the proposed planning controls have been simplified and duplication with the Holiday Rental Code of Conduct has been removed but only so far as to ensure those elements that are important to maintaining neighbourhood amenity are clearly addressed. Key changes include:

- Renaming to 'Short Term Rental Accommodation' (STRA) consistent with other councils
- Broadening definition of STRA from 'dwelling house' to 'dwelling'
- Including a new exempt development clause to ensure development, if part of a community or strata scheme, has prior written approval of the owners' corporation of that scheme. This is already a requirement for any development application. This clause is modelled on the Wyong Council's exempt provision.
- Removing occupant type i.e. adult to avoid discrimination and numbers simplified to '2 occupants per bedroom', with a maximum of 10 occupants for 5 or more bedrooms
- Consolidating exempt and complying planning controls as exempt, and retaining development application:
 1. Exempt: will permit property owners of dwellings with 3 bedrooms or less, who want to rent their property out for short periods any time throughout the year and live there for the remainder of the year, or make the dwelling available for short term renting on a permanent basis; caps number of occupants to 2 per bedroom.
 2. Development Application: provides for dwellings greater than 3 bedrooms; caps number of occupants as 2 occupants per bedroom to a maximum of 10 occupants for 5 or more bedrooms; it is also for dwellings up to 3 bedrooms that cannot comply with the exempt provisions.

Moving forward, a 'Short Term Rental Accommodation Action Plan' (Attachment 1) has been developed that encapsulates these changes. It assigns responsibility for each action and a timeframe for their delivery. It also details the revised planning controls to amend Byron LEP 2014 and Byron Development Control Plan 2014; these will be subject to a further public exhibition.

Whilst the planning controls address key neighbourhood amenity issues such as noise and parking, it will require a whole of community approach if positive behaviour change is to be achieved in some holiday makers and the way in which some holiday lets are managed. The controls will place greater onus on property owners and managers to proactively manage their holiday lets. In particular, complaints relating to noise will need to be dealt with by the owner or manager in the first instance and if not effectively resolved then escalated to the Council if during business hours or the police if after hours. Owners and managers will be required to comply with the Holiday Rental Code of Conduct which requires providing occupants with a set of 'House Rules' and information promoting good neighbourly behaviour. Other controls include that party houses will not be permitted. The contact details of the owner or manager must also be prominently displayed on the property to enable contact to be made at all times.

It is proposed that Council adopt the Action Plan; prepare a planning proposal to amend the LEP and submit to the Department of Planning for Gateway Determination; and exhibit the draft DCP controls. It is proposed that exhibition of both documents (LEP and DCP) run concurrently.

Financial Implications

The development of a register, on which all dwellings are to be recorded prior to their initial use as STRA, may require additional funding. If required, this will be reported to Council following the scoping analysis to determine the register design and what's feasible within Council's IT systems.

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It is anticipated that the planning controls to enable STRA will be gazetted by the end of this year, from which a one year moratorium will apply to enable existing STRA to become compliant. Additional Council resources may be required during peak holiday periods to respond to complaints and to collect evidence. Council will need to consider resource implications of the new controls in the 2016/17 budget and the Compliance Teams work priorities.

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Statutory and Policy Compliance Implications

The Byron Shire Short Term Holiday Accommodation Action Plan recommends amendments to both Byron DCP 2014 and Byron LEP 2014 in order for short term holiday accommodation to take effect.

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Preparation and exhibition of LEPs and DCPs are prescribed under the *Environmental Planning and Assessment Act 1979 and Regulation 2000*.